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6 Palo Alto, California 94306  
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8 Attorneys for Defendant  
9 RSA Data Security, Inc.

FED 27 150 PM '95  
Hb RICHARD L. WILKINS  
CLERK U.S. DISTRICT COURT  
NO. DIST. OF CAL. S.J.

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11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 ROGER SCHLAFLY, ) CASE NO.: C 94 20512 SW (PVT)  
16 Plaintiff, )  
17 vs. ) DEFENDANT RSA DATA SECURITY,  
18 PUBLIC KEY PARTNERS and RSA DATA ) INC.'S ANSWER TO AMENDED  
19 SECURITY, INC., ) COMPLAINT  
20 Defendants. ) DEMAND FOR JURY TRIAL  
21

22 Defendant RSA Data Security, Inc., ("RSA") answers  
23 plaintiff Roger Schlaflly's ("Plaintiff") Amended Complaint as  
24 follows:

25 1. Responding to paragraph 1, RSA admits that it does  
business at 100 Marine Parkway, Redwood City, CA 94065. Except  
as specifically admitted, RSA denies each and every allegation  
set forth in paragraph 1.

26 2. Responding to paragraphs 2 and 3, RSA lacks sufficient  
27 information and belief on which to admit or deny the allegations  
28 of said paragraphs, and, on that basis, denies the allegations of

1 said paragraphs.

2       3. Responding to paragraph 4, RSA admits the allegations  
3 of said paragraph.

4       4. Responding to paragraph 5, RSA admits that under  
5 general federal law this Court has subject matter jurisdiction  
6 over claims arising under antitrust law (Title 15, Sherman  
7 Antitrust Act) and under patent law (Title 35) and under 28  
8 U.S.C. Sections 1331, 1337(a), 1338(a), 1338(b), 2201 and 2202.  
9 Except as specifically admitted above, RSA denies each and every  
10 allegation contained in paragraph 5.

11      5. Responding to paragraph 6, RSA admits that defendant  
12 PKP ("PKP") controls the following U.S. patents and their foreign  
13 equivalents: Diffie-Hellman 4,200770; Hellman-Merkle 4,218,582;  
14 RSA 4,405,829; Hellman-Pohlig 4,424,414; and Schnorr 4,995,082.  
15 Except as specifically admitted, RSA lacks sufficient information  
16 and belief on which to admit or deny the remaining allegations of  
17 said paragraph, and, on that basis, denies the remaining allega-  
18 tions of said paragraph.

19      6. Responding to paragraph 7, RSA lacks sufficient  
20 information and belief on which to admit or deny the allegations  
21 of said paragraph, and, on that basis, denies the allegations of  
22 said paragraph.

23      7. Responding to paragraph 8, RSA denies each and every  
24 allegation contained in said paragraph.

25      8. Responding to paragraphs 9 through 21, the Court  
26 dismissed said paragraphs from the Amended Complaint.

27      9. Responding to paragraph 22, RSA admits that a copy of  
28 a paper by Whitfield Diffie and Martin E. Hellman is attached as

1 Exhibit T to the Amended Complaint. Such document speaks for  
2 itself. Except as specifically admitted above, RSA lacks  
3 sufficient information and belief on which to admit or deny the  
4 remaining allegations of said paragraph, and, on that basis,  
5 denies the remaining allegations of said paragraph.

6 10. Responding to paragraph 23, RSA admits that a copy of  
7 another paper by Diffie and Hellman is attached as Exhibit U to  
8 the Amended Complaint. Such document speaks for itself. Except  
9 as specifically admitted above, RSA lacks sufficient information  
10 and belief on which to admit or deny the remaining allegations of  
11 said paragraph, and, on that basis, denies the remaining allega-  
12 tions of said paragraph.

13 11. Responding to paragraph 24, RSA admits that a copy of  
14 a paper by Diffie is attached as Exhibit V to the Amended  
15 Complaint. Such document speaks for itself. Except as  
16 specifically admitted above, RSA lacks sufficient information and  
17 belief on which to admit or deny the remaining allegations of  
18 said paragraph, and, on that basis, denies the remaining allega-  
19 tions of said paragraph.

20 12. Responding to paragraph 25, RSA lacks sufficient  
21 information and belief on which to admit or deny the allegations  
22 of said paragraph, and, on that basis, denies the allegations of  
23 said paragraph.

24 13. Responding to paragraph 26, RSA denies each and every  
25 allegation contained in said paragraph.

26 14. Responding to paragraph 27, RSA lacks sufficient  
27 information and belief on which to admit or deny the allegations  
28 of said paragraph, and, on that basis, denies the allegations of

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1 said paragraph.

2       15. Responding to paragraph 28, RSA denies each and every  
3 allegation contained in said paragraph.

4       16. Responding to paragraph 29, RSA admits that Cylink has  
5 filed a complaint alleging on information and belief that the RSA  
6 patent is invalid and that such complaint is attached as Exhibit  
7 X to the Amended Complaint. Such document speaks for itself.  
8 Except as specifically admitted above, RSA lacks sufficient  
9 information and belief on which to admit or deny the remaining  
10 allegations of said paragraph, and, on that basis, denies the  
11 remaining allegations of said paragraph.

12      17. Responding to paragraphs 30, 31 and 32, RSA denies  
13 each and every allegation contained in said paragraphs.

14      18. Responding to paragraph 33, RSA admits that a letter  
15 purporting to be from PKP is attached as Exhibit R to the Amended  
16 Complaint and contains the quote set forth in said paragraph.  
17 Such document speaks for itself. Except as specifically admitted  
18 above, RSA denies each and every allegation contained in said  
19 paragraph.

20      19. Responding to paragraph 34, RSA admits that a letter  
21 purporting to be from PKP is attached as Exhibit S to the Amended  
22 Complaint. Such document speaks for itself. Except as  
23 specifically admitted above, RSA denies each and every allegation  
24 contained in said paragraph.

25      20. Responding to paragraphs 35 through 40, RSA lacks  
26 sufficient information and belief on which to admit or deny the  
27 allegations of said paragraphs, and, on that basis, denies the  
28 allegations of said paragraphs.

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1       21. Responding to paragraph 41, RSA denies each and every  
2 allegation contained in said paragraph.

3       22. Responding to paragraph 42, RSA admits that a letter  
4 from D. James Bidzos is attached as Exhibit J to the Amended  
5 Complaint. Such document speaks for itself. Except as specifi-  
6 cally admitted above, RSA denies each and every allegation  
7 contained in said paragraph.

8       23. Responding to paragraph 43, RSA denies each and every  
9 allegation contained in said paragraph.

10      24. Responding to paragraph 44, RSA admits that public  
11 notices appear at the listed Federal Register citations and are  
12 attached as Exhibit L and M to the Amended Complaint, and that a  
13 copy of the DSA patent is attached as Exhibit N. Such documents  
14 speak for themselves. Except as specifically admitted above, RSA  
15 denies each and every allegation contained in said paragraph.

16      25. Responding to paragraph 45, RSA admits that a letter  
17 purporting to be from PKP to NIST is attached as Exhibit O to the  
18 Amended Complaint. Such document speaks for itself. Except as  
19 specifically admitted above, RSA lacks sufficient information and  
20 belief on which to admit or deny the remaining allegations of  
21 said paragraph, and, on that basis, denies the remaining allega-  
22 tions of said paragraph.

23      26. Responding to paragraph 46, RSA admits that a copy of  
24 letter purporting to be from PKP is attached as Exhibit H to the  
25 Amended Complaint and that it contains the sentence quoted in  
26 said paragraph. Such document speaks for itself. Except as  
27 specifically admitted above, RSA denies each and every allegation  
28 contained in said paragraph.

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1       27. Responding to paragraph 47, RSA lacks sufficient  
2 information and belief on which to admit or deny the allegations  
3 of said paragraph, and, on that basis, denies the allegations of  
4 said paragraph.

5       28. Responding to paragraph 48, RSA admits that a copy of  
6 Ciphertext is attached as Exhibit AB to the Amended Complaint and  
7 that it contains the sentence quoted in said paragraph. Such  
8 document speaks for itself.

9       29. Responding to paragraph 49, RSA denies each and every  
10 allegation contained in said paragraph.

11      30. Responding to paragraph 50, RSA denies each and every  
12 allegation contained in said paragraph.

13      31. Responding to paragraphs 51 and 52, RSA lacks  
14 sufficient information and belief on which to admit or deny the  
15 allegations of said paragraphs, and, on that basis, denies the  
16 allegations of said paragraphs.

17      32. Responding to paragraphs 53 and 54, RSA denies each  
18 and every allegation contained in said paragraphs.

19      33. Responding to paragraphs 55 through 73, the Court  
20 dismissed said paragraphs from the Amended Complaint.

21      34. Responding to paragraphs 74 and 80, RSA denies each  
22 and every allegation contained in said paragraphs.

23      35. Responding to paragraph 81, RSA admits that it is  
24 engaged in interstate commerce and that its products are sold  
25 nationwide. Except as specifically admitted above, RSA denies  
26 each and every allegation contained in said paragraph.

27      36. Responding to paragraph 82, RSA admits that a copy of  
28 a letter from D. James Bidzos is attached as Exhibit AD to the

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1 Amended Complaint and that it contains the sentence quoted in  
2 said paragraph. Such document speaks for itself.

3       37. Responding to paragraph 83, RSA admits that Cylink  
4 controls Caro-Kann Corp., a partner in PKP, as a wholly-owned  
5 subsidiary with no employees, sales, or physical assets. RSA  
6 further admits that the Hellman patents were originally assigned  
7 to Stanford and that the RSA patent was originally assigned to  
8 MIT and exclusively licensed to RSA. RSA further admits that the  
9 Hellman patents, the RSA patent and the Schnorr patent are under  
10 the exclusive licensing control of PKP. RSA denies that PKP has  
11 pooled patents in an attempt to monopolize public key  
12 technologies and that the Hellman patents were originally  
13 exclusively licensed to Cylink. Except as expressly admitted or  
14 denied above, RSA lacks sufficient information and belief on  
15 which to admit or deny the remaining allegations of said  
16 paragraph, and, on that basis, denies the remaining allegations  
17 of said paragraph.

18       38. Responding to paragraphs 84 through 91, RSA denies  
19 each and every allegation contained in said paragraphs.

20       39. Responding to paragraph 92, RSA admits that a copy of  
21 the text on a poster is attached as Exhibit Z to the Amended  
22 Complaint and that it contains the sentence quoted in said  
23 paragraph. Such document speaks for itself. Except as  
24 specifically admitted above, RSA denies each and every allegation  
25 contained in said paragraph.

26       40. Responding to paragraph 93, RSA admits that a copy of  
27 picture of D. James Bidzos wearing a T-shirt is attached as  
28 Exhibit AA to the Amended Complaint. Such document speaks for

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1 || itself.

2       41. Responding to paragraph 94, RSA lacks sufficient  
3 information and belief on which to admit or deny whether  
4 Plaintiff has been developing software for the Fortezza (aka  
5 Tessera) card, a device which purports to have Clipper chip  
6 technology, and on that basis, denies such allegations. Except  
7 as expressly denied on information and belief, RSA denies each  
8 and every allegation contained in said paragraph.

9           42. Responding to paragraphs 95 through 99, RSA denies  
10 each and every allegation contained in said paragraphs.

## **AFFIRMATIVE DEFENSES**

In further answer to Plaintiff's Amended Complaint and as affirmative defenses thereto, RSA alleges that:

## FIRST AFFIRMATIVE DEFENSE

16       43. Plaintiff has failed to state a claim on which relief  
17 can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

19           44. Any damages or injuries suffered by Plaintiff were  
20 occasioned by his own wrongful actions.

### THIRD AFFIRMATIVE DEFENSE

22           45. Plaintiff's claims are barred by the applicable  
23 statutes of limitations.

#### **FOURTH AFFIRMATIVE DEFENSE**

25           46. Plaintiff's claims are barred by waiver and/or  
26 estoppel.

## FIFTH AFFIRMATIVE DEFENSE

28 47. Plaintiff's claims are barred by unclean hands.

## SIXTH AFFIRMATIVE DEFENSE

48. Plaintiff's claims are barred by laches.

## SEVENTH AFFIRMATIVE DEFENSE

49. Plaintiff's claims are barred by fraud.

## EIGHTH AFFIRMATIVE DEFENSE

50. Plaintiff's claims are void, wrongful, without right, illegal, and/or unlawful.

## NINTH AFFIRMATIVE DEFENSE

51. Plaintiff's damages, if any, were caused in whole or in part by person or persons other than RSA.

## TENTH AFFIRMATIVE DEFENSE

52. The MIT Patent was validly issued and remains valid and enforceable.

## **ELEVENTH AFFIRMATIVE DEFENSE**

15       53. At all times relevant hereto, RSA's conduct and  
16 statements were in good faith, engaged in without malice, and  
17 were privileged and/or justified.

## **TWELFTH AFFIRMATIVE DEFENSE**

19           54. This Court lacks subject matter jurisdiction, as  
20 Plaintiff has not alleged facts that would give rise to such  
21 jurisdiction.

**THIRTEENTH AFFIRMATIVE DEFENSE**

23        55. Some or all of Plaintiff's claims lack necessary and  
24 indispensable parties as required by Fed. R. Civ. P. 19, and so  
25 there is a misjoinder or nonjoinder of parties.

**FOURTEENTH AFFIRMATIVE DEFENSE**

27       56. Plaintiff lacks standing to assert some or all of the  
28 claims set forth in the Amended Complaint.

1 FIFTEENTH AFFIRMATIVE DEFENSE

2 57. Plaintiff is barred from any recovery on the Amended  
3 Complaint because he failed to make reasonable efforts to  
4 mitigate his damages although he had a reasonable opportunity to  
5 do so.

6 SIXTEENTH AFFIRMATIVE DEFENSE

7 58. To the extent that RSA has monopoly power in the  
8 relevant market, which is denied, such power was unavoidably  
9 thrust upon RSA as a result of, among other things, business  
10 acumen, superior products, economic or technical skill and  
11 efficiency, and natural advantages stemming from RSA's  
12 intellectual property rights.

13 SEVENTEENTH AFFIRMATIVE DEFENSE

14 59. RSA is exempt from antitrust liability for its conduct  
15 by virtue of the patent laws (Title 35).

16 EIGHTEENTH AFFIRMATIVE DEFENSE

17 60. Any discrimination in prices was lawful under the  
18 antitrust laws in that any such discrimination was the result of  
19 a good faith effort to meet competition.

20 NINETEENTH AFFIRMATIVE DEFENSE

21 61. Any discrimination in prices was lawful under the  
22 antitrust laws in that any such discrimination was the result of  
23 due allowance in the costs involved with respect to particular  
24 purchasers.

25 TWENTIETH AFFIRMATIVE DEFENSE

26 62. Any discrimination in prices was lawful under the  
27 antitrust laws in that any such discrimination was the result of  
28 changing conditions in the marketability of the licenses or

1 products involved.

2 PRAYER FOR RELIEF

3 WHEREFORE, Defendant RSA prays for:

4 1. Dismissal of Plaintiff's Amended Complaint in its  
5 entirety with prejudice, judgment in favor of RSA and against  
6 Plaintiff, and denial of all relief requested in the Amended  
7 Complaint;

8 2. Defendant's reasonable attorney fees;

9 3. Defendant's costs of suit; and

10 4. Such other further relief as this Court deems just and  
11 proper.

12 Dated: February 27, 1995

TOMLINSON ZISKO MOROSOLI & MASER

13 By:

14 Thomas E. Moore III  
15 Attorneys for Defendant RSA  
16 Data Security, Inc.  
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1                           **DEMAND FOR JURY TRIAL**

2                           Defendant RSA Data Security, Inc. hereby demands a jury  
3 trial in this action.

4 Dated: February 27, 1995

TOMLINSON ZISKO MOROSOLI & MASER

5 BY:

6                             
7                           Thomas E. Moore III  
8                           Attorneys for Defendant RSA  
9                           Data Security, Inc.

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1 PROOF OF SERVICE U.S. MAIL

2 SCHLAFLY V. PUBLIC KEY PARTNERS AND RSA DATA SECURITY, INC.  
3 UNITED STATES DISTRICT COURT CASE NO.: C 94 20512 PVT

4 I am employed in the County of Santa Clara, State of  
5 California. I am over the age of 18 and not a party to the  
6 within action. My business address is 200 Page Mill Road, Second  
Floor, Palo Alto, California 94306.

7 On February 27, 1995, I served the foregoing documents  
8 described as:

9 **DEFENDANT RSA DATA SECURITY, INC.'S ANSWER TO AMENDED COMPLAINT**

10 on the interested parties in this action addressed as follows:

11 Roger Schlaflly  
12 P. O. Box 1680  
13 Soquel, CA 95073

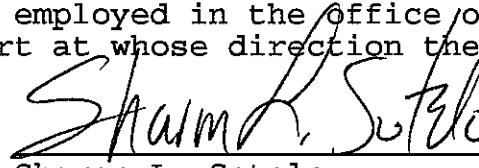
14 Thomas R. Hogan  
15 60 South Market Street, Suite 1125  
16 San Jose, California 95113-2332

17 [X] BY MAIL

18 [ ] I deposited such envelope in the mail at Palo Alto,  
19 California. The envelope was mailed with postage  
20 thereon fully prepaid.  
21 [X] As follows: I am "readily familiar" with the firm's  
22 practice of collection and processing correspondence for  
23 mailing. Under that practice it would be deposited with  
24 the U.S. postal service on that same day with postage  
25 thereon fully prepaid at Palo Alto, California in the  
affidavit.

26 Executed on February 27, 1995, at Palo Alto, California.

27 [ ] **STATE:** I declare under penalty of perjury under the laws of  
28 the State of California that the above is true and correct.  
[X] **FEDERAL:** I declare that I am employed in the office of a  
member of the bar of this Court at whose direction the  
service was made.

  
Sharon L. Sotelo